

Topsfield Zoning Board of Appeals

January 5, 2011

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Scott Dow, David Moniz and Jody Clineff. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

Visitors: Selectmen Martha Morrison and Richard Gandt; Jackie Slaga and Dishant Shah for T-Mobile, and peer review consultant David Maxson, and many members of the public.

Minutes: Member David Moniz made the motion to approve the minutes of November 23, 2010 as written; seconded by Member Jody Clineff; so voted 5-0.

124 River Road: At 8:00PM Chairman Moriarty called to order the public hearing to consider the application submitted by T-Mobile Northeast LLC pursuant to Article XII, Section 12.02A requesting (1.) a special permit subject to Article V and site plan review; and (2.) a variance to the dimensional requirement to allow the installation of a major wireless communications facility with a 100' monopole and related equipment in a fenced compound on premises located at 124 River Road, commonly known as Trinity Episcopal Church.

Chairman Moriarty in his opening statement noted that the public hearing had been postponed from the original scheduled date of November 23rd at which time no testimony was given. Further, Chairman Moriarty summarized that there were two levels of review for this application; the first of which is the local Zoning By-law; the second is under the Federal Telecommunications Act ("TCA"). The proposed site location of the cell tower falls within the geographic circle designated as the area in which towers would not be allowed under the local By-law within the Town of Topsfield. However, pursuant to federal law, a variance may be granted if it is determined that specific criteria established under the TCA have been met. In order to grant such relief, the Board must find (1) that there is a significant gap in coverage without the facility; and (2) that there is no other feasible alternative site for the facility.

Attorney Jackie Slaga, representing T-Mobile made a formal presentation to the Board. Ms. Slaga noted that the Applicant would be seeking a variance and a special permit to allow the siting and installation of a 100' "stealth" monopole communications facility at the rear of 124 River Road. The site consists of 8 acres with significant tree canopy. The tower and its ground equipment would be in a fenced compound that meets the setbacks per the By-law. Attorney Slaga further stated that the 8,000 feet radius prevented the installation of communication facilities within the center of Topsfield.

Ms. Slaga reviewed the standards for the site selection process noting that there is no existing communication tower within the search area, nor any suitable non-residential structures in the area that a facility could be attached. There is a Town-owned water tower (Garden Street) 1&1/4 miles from the search ring center; however, radio frequency testing has determined that the water tank is too far and will not cover the ring objective. Relative to alternative sites, it was noted that there were areas at the Masconomet Regional High School; however, the school district has failed to respond. A small residential site on Middleton Road would also be suitable for tower development but the property owner was not interested.

In conjunction with Ms. Slaga's summary of the site selection process, T-Mobile engineer Dishant Shah reviewed the radio frequency charts to demonstrate the lack of service in the search area and the type of frequency that would be achieved by placing a tower at the proposed site. The area would achieve service not only to Route 95, but provide data service to residential properties in the area and therefore would achieve a broader customer base when pooled with the cell tower co-location in the Town of Boxford.

The Board members then reviewed the photos submitted with the application as well as the new photos submitted as a result of the visibility test at the site on December 18, 2010. The Board noted that there were errors in the labeling on the views that would need to be addressed and re-submitted. T-Mobile representatives noted that the site was chosen for its significant tree canopy. The Board noted that based on the observations of the members at the site visit the installation site location as staked would be visible from River Road. The members voiced their concern that several trees would need to be removed for access and also the construction of the tower and compound. The Board requested that the Applicant provide a tree inventory of the site.

At this time, the Town's peer review consultant, David Maxson of Isotrope Wireless followed with a presentation relative to the thresholds that are required under the Federal Telecommunications Act and the local Zoning By-laws. Specific to this wireless facility, the Applicant needs to provide evidence and the Board must find (1) that there is a significant gap in coverage without the facility in the search area; and (2) that there is no other reasonable viable alternative site for the facility within the specific search area. Mr. Maxson noted that the cellular industry's current growth was in the area of data services, and in-building services. He then requested that the Applicant provide printed data on comments (as stated above).

According to the bylaw, a major wireless facility can only be located outside the radius. In this case, T-Mobile must show relative to its request for a variance that it can meet the objectives of the by-law except for the 8000 radius location in addition to meeting the federal thresholds. Massachusetts state law is very limiting relative to granting relief by a variance; however, under federal law, relief is less restrictive if the Applicant can meet the thresholds related to significant gap in services and no viable alternative location for an area.

At this time, the Board discussed viable alternatives with the Applicant. Ms. Slaga stated that currently T-Mobile had completed the permitting process in Boxford for placement of antennae on monopole located on Mass Highway property and is in the process of negotiating the lease terms.

The Board then explored with the Applicant's representatives possible alternative locations: private property in Boxford (owner had no interest), Ferncroft properties, Garden Street water tower, tree farm in Topsfield, dump site across Rt. 95 in Middleton, and Masconomet School District. The Board requested documentation relative to discussions with the school district concerning the possible siting of a facility as a viable alternative location

Mr. Maxson at this time joined the discussion to address questions concerning microwaves produced by cell usage. He informed the Board that cell waves within 1 ½ miles from a tower are low power and must comply with federal standards and that in his professional opinion did not pose a health hazard.

At this time, the Chairman allowed questions from the visitors. Mr. James Ugone of 16 Fox Run Road questioned that the gap in service was not related to cellular car service but market driven for data services. Mr. Michael O'Hara of 103 River Road noted that the tower would create a large visual impact from his house. Mr. Robert Hunziker of 121 River Road stated that he had a direct view from his front window of the Church's driveway and proposed installation site. Ms. Kindra Clineff of 95 River Road noted that the proposed location and surrounding properties including the abutting property (Meredith Farm) are listed as part of the River Road-Cross Street National Historic District and questioned the findings submitted to the local Historical Commission and the Massachusetts State Commission.

In summary, Chairman Moriarty stated that the filing does not appear to meet the standard for a variance under the local by-law and the Board would need to look to the federal statute as the basis for a decision. He requested that the Applicant provide information relative to alternate sites at Masco and the private tree farm property. He then discussed the visibility of the proposed site from the street and requested that the engineers look at a possible push back behind the cemetery, and requested that an inventory of trees to be removed. Further, the Applicant was requested to provide a description of the antennae and other equipment to be installed as part of the facility.

The Chairman then reviewed a list of deliverables to be provided by the Applicant as follows:

- Documents relative to the history with Masconomet Regional School District
- Data on other possible sites: tree farm, dump across Rt. 95 in Middleton, golf course at Ferncroft
- Revision to labeling of picture views
- Additional photos from street (River Road) and Fox Run, Cross Street peak
- Traffic data from DOT; counts from Rt.95

- Enhance photo of proposed tower at 120 feet and tree canopy
- Tree mapping
- Tree removal inventory
- Utility light pole relative to access
- Site characteristic of surrounding poles
- Environmental & historic checklist

The meeting was adjourned at 11:08 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator